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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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9 MARIA HERNANDEZ, et al.,

CASE NO. CV F 05-0115 LJO GSA

10 Plaintiffs,

**ORDER TO DISMISS FOR DISOBEDIENCE
OF ORDERS**

11 vs.

(Docs. 7, 18, 19.)

12 MITCHELL ROBINSON,

13 Defendants.
14 _____/

15 **BACKGROUND**

16 This Court's May 26, 2005 order requires status reports every 120 days during stay of this action.
17 Plaintiffs last filed a June 30, 2008 status report.

18 In the absence of timely status reports, this Court's December 12, 2008 order ("December 12
19 order") required plaintiffs, no later than December 22, 2008, to file a status report. The December 12
20 order stated: **"This Court ADMONISHES plaintiffs that failure to comply with this order will
21 result in sanctions, including dismissal of this action."** (Bold in original.) Plaintiffs failed to respond
22 to the December 12 order.

23 This Court's December 23, 2008 order to show cause ("OSC") required plaintiffs, no later than
24 January 5, 2009, to show cause in writing why this Court should not impose sanctions, including
25 dismissal of this action, for failure to comply with the December 12 order and to file timely status
26 reports. The OSC stated: **"This Court ADMONISHES plaintiffs that failure to comply with this
27 order will result in sanctions, including dismissal of this action."** (Bold in original.) Plaintiffs failed
28 to respond to the OSC.

DISCUSSION

Failure To Comply With Orders

This Court's Local Rule 11-110 provides that "... failure of counsel or of a party to comply with these Local Rules or with any order of the Court may be grounds for the imposition by the Court of any and all sanctions . . . within the inherent power of the Court." District courts have inherent power to control their dockets and "in the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal of a case." *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to obey a court order or local rules. *See, e.g., Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

In determining whether to dismiss an action for failure to comply with a court order or local rules or for lack of prosecution, a court must consider several factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to defendant; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives. *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-1261; *Ghazali*, 46 F.3d at 53.

In this case, the public's interest in expeditiously resolving this litigation and the Court's interest in managing the docket weigh in favor of dismissal as plaintiffs indicate a lack of interest to further litigate or prosecute this action. The third factor -- risk of prejudice to defendant -- also weighs in favor of dismissal, since a presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action. *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor -- public policy favoring disposition of cases on their merits -- is greatly outweighed by the factors in favor of dismissal discussed herein. Finally, a court's warning to a party that its failure to obey the court's

1 order will result in dismissal satisfies the “consideration of alternatives” requirement. *Ferdik*, 963 F.2d
2 at 1262; *Malone*, 833 F.2d at 132-133; *Henderson*, 779 F.2d at 1424. The December 12 order and OSC
3 admonished plaintiffs that “**failure to comply with this order will result in sanctions, including**
4 **dismissal of this action.**” Plaintiffs ignored the OSC which gave plaintiffs a further opportunity to file
5 a status report. Despite the clear directives of the December 12 order and the OSC, this Court is puzzled
6 why plaintiffs failed to file a simple status report. Plaintiffs received adequate warning that dismissal
7 will result from disobedience of this Court’s orders and failure to prosecute this action. Quite simply,
8 plaintiffs have failed to comply with this Court’s orders or to meaningfully and intelligently respond.

9 **CONCLUSION AND ORDER**

10 For the reasons discussed above, this Court:

- 11 1. DISMISSES this action without prejudice;
- 12 2. FURTHER ADMONISHES plaintiffs and their counsel of the need to obey this Court’s
13 orders and Local Rules; and
- 14 3. DIRECTS the clerk to close this action.

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16 IT IS SO ORDERED.

17 Dated: January 20, 2009 /s/ Lawrence J. O'Neill
18 UNITED STATES DISTRICT JUDGE
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